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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,033	02/06/2004	Shawn L. Elahee	5760-20600/VRTS-0397	7728

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EXAMINER

KO, DANIEL BOKMIN

ART UNIT PAPER NUMBER

2189

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,033	<b>Applicant(s)</b> ELAHEE, SHAWN L.	
	<b>Examiner</b> Daniel B. Ko	<b>Art Unit</b> 2189	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/4/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is responsive to the application filed on 2/6/2004. Claims 1-27 have been submitted for examination.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1-15 are not limited to tangible embodiments. In view of Applicant's disclosure, specification page 15, lines 21-29 and page 16, lines 1-10, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g., disk, CD-ROM, DVD-ROM, CD-R, and etc.) and intangible embodiments (e.g., transmission media or signals such as electrical, electromagnetic, or digital signals conveyed via a communication medium such as a network and/or a wireless link). As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 12, 15-19, and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamagami et al. (US Patent 6,836,830 B1), hereinafter simply Yamagami.

Regarding claims 1, 16 and 27, Yamagami teaches a computer accessible medium comprising a plurality of instructions which, when executed:

modify at least a first attribute corresponding to a first volume, the first volume corresponding to a computer system's backup state (column 16, lines 1-19; column 17, lines 28-34); and

subsequent to modifying the first attribute, cause the first volume to be created on a first computer system to which the computer system's backup state is to be restored (column 4, lines 41-47).

Regarding claims 2 and 17, Yamagami teaches a computer accessible medium wherein the plurality of instructions, when executed, modify the first attribute responsive to user input (column 17, lines 28-34; Yamagami teaches the command for changing the attribute of the volume that clearly shows user can input the instructions to modify the attribute of the volume).

Regarding claims 3 and 18, Yamagami teaches a computer accessible medium wherein the first attribute comprises a protection attribute (column 4, lines 61-67; column 5, lines 1-5; Yamagami shows the RAID as a protection attribute).

Regarding claims 4 and 19, Yamagami teaches a computer accessible medium wherein the protection attribute comprises a redundant array of inexpensive disks (RAID) level (column 4, lines 61-67; column 5, lines 1-5).

Regarding claim 12, Yamagami teaches a computer accessible medium wherein the plurality of instructions, when executed, modify a second attribute corresponding to a first filesystem corresponding to the computer system's backup state (column 16, lines 1-19; column 17, lines 28-34).

Regarding claim 15, Yamagami teaches a computer accessible medium wherein the first volume is created as part of a restore of the backup state to the first computer system (column 4, lines 41-47).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 5-11, 13-14, and 20-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagami et al. (US Patent 6,836,830 B1), in view of Ito et al. (US Patent Application 2002/0016792 A1), hereinafter simply Ito.

Regarding claims 5 and 20, Yamagami teaches a computer accessible medium comprising a plurality of instructions which, when executed:

modify at least a first attribute corresponding to a first volume, the first volume corresponding to a computer system's backup state (column 16, lines 1-19; column 17, lines 28-34); and

subsequent to modifying the first attribute, cause the first volume to be created on a first computer system to which the computer system's backup state is to be restored (column 4, lines 41-47).

Yamagami fails to teach the protection attribute comprises a whether or not the first volume is mirrored. Ito teaches the mirroring operation is performed on physical disk device (paragraph 159).

At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the Yamagami with Ito. The motivation for doing so would have been an adding protection attributes of mirroring or not when restoring the computer system. So, the user has a flexibility of modifying the backup volume's attribute according to his or her needs or requirements when restoring the computer system. Furthermore, Ito provides a file system which has a function of mirroring files without making the user aware of the logical volume (paragraph 11).

Regarding claims 6-7 and 21-22, Ito teaches a computer accessible medium wherein the first attribute comprises a performance attribute comprises whether or not the first volume is striped (paragraph 161).

Regarding claims 8-10 and 23-25, Ito teaches a computer accessible medium wherein the first attribute comprises a size of the first volume (See Fig. 9, Disk Space).

It is clear that a size of the volume can be reduced or increased or equal when restoring the computer system from the backup volume depends on needs or availability of disks.

Regarding claims 11 and 26, Ito teaches a computer accessible medium wherein the first attribute comprises a type of the first volume, and wherein modifying the first attribute comprises changing the type (paragraphs 159).

Regarding claim 13, Ito teaches a computer accessible medium wherein the computer system's backup state comprises a configuration file, and wherein the configuration file comprises data describing the first volume and the first attribute, and wherein modifying the first attribute comprises changing the configuration file (paragraphs 38, 143, and 159).

Regarding claim 14, Ito teaches causing the first volume to be created comprises generating a restore procedure that the computer system executes (paragraphs 9, 103, and 161).



**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel B. Ko whose telephone number is 571-272-8194.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Manorama Padmanabhan can be reached on 571-272-4210. The fax phone number for the organization where this application or proceeding is assigned is 703-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel B. Ko  
AU 2189



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SUPERVISORY PATENT EXAMINER